IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR.JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

RCRev..No. 19 of 2006()

RCA.12/2003 of I ADDL. DISTRICT COURT, TRIVANDRUM
RCP.42/2001 of PRL.M.C.,TRIVANDRUM
.....

REVISION PETITIONER/APPELLANT/COUNTER PETITIONER:-

GOPALAKRISHNAN NAIR,
S/O.MADHAVAN PILLAI, KANJIRATHALA VEEDU,
THIRUVALLOM, THIRUVALLOM P.O. TRIVANDRUM.

BY ADV. SRI.G.S.REGHUNATH
SRI.BASANT BALAJI

RESPONDENTS: RESPONDENT/PETITIONER:-

P.MUMTAZ BEGUE, SUNIL MANZIL,
THIRUVALLOM, THIRUVALLOM P.O. TRIVANDRUM.

BY ADV. SRI.D.SAJEEV

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 06/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Balakrishnan Nair &
T.R. Ramachandran Nair, JJ.

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business in textiles. For that, four rooms bearing door Nos.T.P.407 to 410 are necessary. The present Rent Control Petition is filed seeking eviction of rooms bearing door Nos.T.P.408 and 410. Claiming eviction of room No.T.P.No.407, R.C.P. No.29/2001 was filed. The landlady got vacant possession of room No. T.P. No.409, but the same has been rented out on a temporary basis to a tenant who had agreed to surrender possession at any time. The tenant is not depending on the income from the premises for his livelihood. There are other rooms in the locality available for shifting his business. So, in view of the bonafide requirement of the landlady and her husband for the rooms, she sought eviction.

3. The tenant resisted the Rent Control Petition contending that the need urged is only a ruse to evict him. He declined to enhance the rent as claimed and therefore the Rent Control Petition was filed. One of the rooms which the landlady got possession recently, i.e. room bearing door No.T.P.409, has been let out by her. That will belie her claim of bonafide need. It is also submitted that the tenant is depending for his livelihood on the income from the tenanted premises. There are no suitable rooms in the locality for shifting his business.

4. The Rent Controller raised the necessary issues. From the side of the landlady, she had got herself examined as P.W.1 and Exts.A1 to A7

were marked. From the side of the tenant, C.P.Ws.1 and 2 were examined. Ext.C1 commission report was marked as court exhibit.

5. As mentioned earlier, the finding of the Rent Controller under Section 11(3) of the Act and its affirmation by the appellate authority, alone is under challenge before us. Learned counsel for the petitioner submitted that the conduct of the respondent herein in renting out room bearing door No. T.P. 409 is a circumstance which should defeat the claim of the landlady for the rooms under Section 11(3) of the Act. Secondly, it is contended that both the authorities found that he is not eligible to get the protection of the second limb of the second proviso to Section 11(3) of the Act. The said finding is unsustainable, it is submitted. The authorities below heavily relied on the Commissioner's report, Ext.C1 to find against the tenant. But learned counsel for the petitioner submitted that even assuming the findings of the Commissioner regarding availability of rooms are correct, still those rooms are not available in the locality. According to him, the rooms found vacant, were at a distance of 700 meters from the tenanted premises. The same cannot be treated as one in the same locality. To explain the concept of locality, learned counsel for the petitioner relied on the decision of this court reported in **Thomas v. Joseph** (1986 KLT 392). Learned counsel further submitted that though the burden is on the

tenant to show that rooms are not available in the locality, the same can be discharged by asserting that no rooms are available in the locality for shifting the business. In support of the said submission, a decision of this court in **Sadanandan v. Kunheen** (1991 (2) KLT 628) is relied on. In the said decision, it is held that since the tenant has to prove something negatively, the same can be done by asserting that no rooms are available in the locality. So, the petitioner prayed for setting aside the finding of the Rent Control Appellate Authority under the second limb of the second proviso to Section 11(3) of the Act. Learned counsel for the respondent, on the other hand, submitted that the Commissioner has reported that there is a room within 50 meters of the tenanted premises. It is also submitted that Thiruvallam locality is a large area and therefore the building at a distance of 700 meters will come within the locality.

6. In the deposition of P.W.1, he has stated that there are other rooms in the locality, where the tenant can shift his business. Practically, there was no cross examination on this point. In the evidence of R.W.1, he has only stated that no rooms are available in the locality for shifting his business. But he has not tendered any evidence to show that the report of the Commissioner is not correct. Though he has filed an objection, he has not chosen to take steps to examine the Commissioner and challenge his report.

7. In support of the first point raised by the petitioner regarding the action of the landlady giving on rent the room bearing door No.409 which she got possession, learned counsel for the petitioner relied on the decision of the Apex Court in **Sree Balaji Krishna Hardware Stores v. Srinivasaiah** (1998 (1) RCR 235). But in this case, we are of the view that the principles laid down in the said decision cannot apply. Here, the case of the landlady is that she had entrusted the room on rent to a reliable tenant who is willing to give vacant possession at any time. In such circumstances, the landlady need not keep her room vacant till all the cases are over and other rooms are also vacated. So, we find it difficult to accept the contention of the petitioner that the said conduct will disprove her bonafide requirement. Going by the evidence on record including the Commissioner's report, there are rooms available in the locality for shifting the business of the petitioner. But whether the rooms available are in the locality or not, is the only dispute raised by the learned counsel for the petitioner. Whether the room is in the locality is a matter which has to be decided with reference to the facts of each case. In a very large town a building within one or two kilometers will still be in the same locality. If it is a small place, a building within 500 meters may not be in the same

locality. In this case, we find that there is no evidence from the side of the tenant on this aspect. Therefore, we are not in a position to interfere with the finding of the appellate authority as well as the Rent Controller that there are rooms available in the locality for the purpose of shifting the business of the tenant.

8. No other points were urged.

In the result, the revision petition fails and it is dismissed.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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ORDER IN IA NO.116/2006

DISMISSED.

6/11/2007 SD/- K. BALAKRISHNAN NAIR, JUDGE

SD/- T.R. RAMACHANDRAN NAIR, JUDGE.

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P.S. TO JUDGE